

FILED

09 MAY 22 AM 8:53 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
U.S. DISTRICT COURT
N.D. OF ALABAMA EASTERN DIVISION

EUROCARDAN, S.P.A., and)

SICMA, S.P.A.,)

PLAINTIFFS,)

V.)

DALE PHILLIPS EQUIPMENT)

MANUFACTURING CO., INC.,)

DEFENDANT.)

Civil Action Case Number:

CV-09-HGD-1007-E

COMPLAINT TO COLLECT REMAINING PRICE DUE
FOR GOODS SOLD AND DELIVERED

COME NOW the plaintiffs EUROCARDAN, S.p.A. ("Eurocardan") and SICMA, S.p.A. ("Sicma") (hereinafter collectively referred to as "Plaintiffs"), by and through their undersigned attorney, and bring the following Complaint for payment on goods sold and delivered against the defendant Dale Phillips Equipment Manufacturing Company, Inc. ("Dale Phillips" or "Defendant"). For their Complaint, the Plaintiffs state as follows:

PARTIES

1. Eurocardan, is a foreign corporation organized and incorporated under the laws of the Republic of Italy, with its principal place of business located in Atesa, Italy. Eurocardan is in the business of manufacturing and selling agricultural equipment and component parts.

2. Sicma is a corporation organized and incorporated under the laws of the Republic of Italy, with its principal place of business located in Miglianico, Italy. Sicma is in the business of manufacturing and selling agricultural equipment and machinery.

3. Plaintiffs have common shareholders and ownership.

4. Defendant Dale Phillips is a corporation organized and existing under the laws of the State of Alabama with its principal place of business located at Route 1, Box 12-F, Wellington, Calhoun County, Alabama.

JURISDICTION AND VENUE

5. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. Section 1332(a), in that: (a) there is complete diversity of citizenship between the Plaintiffs and the Defendant; and (b) the amount in controversy of the total claims exceeds \$75,000.00, exclusive of interest and costs.

6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(a)(1) and (2) and (c), in that the acts complained of and giving rise to this action took place within this District and Division, and, upon information and belief, Defendant's principal place of business is in this District.

CLAIM FOR RELIEF

7. The Plaintiffs reallege Paragraphs 1 through 6 as if fully set forth herein.

8. Plaintiffs share a commercial sales office and export sales office (the "Sales Office"), which handles customer inquiries and orders, including export sales. A copy of Marcello Aurora's business cards evidencing his sales role for both Plaintiffs is attached hereto as Exhibit C.

9. Additionally, Sicma and Eurocardan jointly market their products and capabilities worldwide by participation in trade shows, events and customer contact.

10. Prospective and current customers contact this joint Sales Office to place a purchase order for purchase of machinery, equipment or component parts.

11. Upon receiving a customer's purchase order, Marcello Aurora, head of the Sales Office, reviews the order and subsequently forwards an a manufacturing order to Sicma, Eurocardan or to both entities, depending upon on the nature of the order and the specific parts requested.

12. Typically, the customer does not place an order for one or the other company, but rather simply orders parts or machinery via the Sales Office.

13. Plaintiffs manufacture the components in their respective factories to fulfill the orders, and the sales office organizes the logistics and shipment to the customer.

14. When an order is fulfilled with components and products manufactured by both Sicma and Eurocardan, it is customary for the sales office to ship the order to the customer in the same container.

15. The Sales Office is the point of contact with the customer, and subsequently handles invoicing, payment terms and follow up communications.

16. Commencing in or about 2005 and continuing on separate occasions through 2007, the Plaintiffs sold and delivered to Defendant multiple orders of components and parts totaling at least \$218,018 (Two Hundred Eighteen Thousand Eighteen Dollars and Fifty Cents).

17. On occasion, Defendant ordered components and parts through its agent in Italy, IMC-Cosmo, who subsequently passed the purchase orders to the Sales Office. Defendant also placed orders directly with the Sales Office, and engaged in follow up communications with Marcello Aurora and his colleagues in the Sales Office.

18. The Sales Office routed Defendants' purchase orders either to Sicma or to Eurocardan based on each company's respective manufacturing capacities.

19. Defendant made a purchase order through the Sales Office that was filled and manufactured by Sicma and invoiced to Defendant on July 17, 2006 in the amount of \$78,395.00. A copy of Invoice #1066 evidencing this transaction is attached hereto as Exhibit A.

20. Defendant made a subsequent purchase order through the Sales Office that was filled and manufactured by Eurocardan and invoiced to Defendant on July 27, 2007 in the amount of \$77,000. A copy of Invoice #803 evidencing this transaction is attached hereto as Exhibit B.

21. Defendant accepted all of the goods shipped by the Plaintiffs. The component parts shipped by the Plaintiffs conformed to Defendant's purchase orders and Defendant made no complaint concerning any shipment.

22. The prices charged by the Plaintiffs were reasonable and customary, and Defendant made no complaint that the invoices were for a price other than that agreed to by the Defendant.

23. Defendant made partial payments to Plaintiffs totaling \$62,000.00 (Sixty-Two Thousand Dollars), leaving a balance due and owing to Plaintiffs on this account of \$93,395.00 (Ninety-Three Thousand Three Hundred Ninety-Five Dollars).

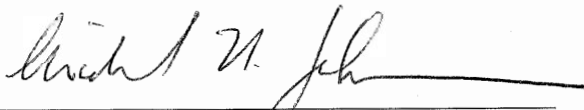
24. Despite numerous requests by the Plaintiffs, Defendant has failed and refused to pay the balance due, and remains indebted to Plaintiffs in the amount of \$93,395.00 (Ninety-Three Thousand Three Hundred Ninety-Five Dollars).

WHEREFORE, Plaintiffs request this court enter judgment in favor of the Plaintiffs and against Defendant Phillips Manufacturing Co, Inc.:

- (1) in the amount of \$93,395.00;
- (2) pre-judgment interest on this amount as allowed by law;
- (3) costs of this suit; and
- (4) post-judgment interest on the total sum of these awards until the judgment is fully paid by Defendant.

This is the 22nd day of May, 2009.

Respectfully submitted,

By: 
Michael H. Johnson (JOH-109)
Attorney for Plaintiffs Siema, S.p.A and Eurocardan, S.p.A.

OF COUNSEL:

Barber Johnson & Associates, LLC
1130 South 22nd Street, Suite 3500
Birmingham, AL 35205
Tel: (205) 918-0022
Fax: (205) 918-0023
mjohnson@barberjohnson.com

PLEASE SERVE DEFENDANT BY CERTIFIED MAIL AT THE FOLLOWING ADDRESSES:

Dale Phillips Manufacturing Company, Inc.
c/o Mr. William Dale Phillips
Registered Agent
Route 1, Box 12-F
Wellington, AL 36279

Dale Phillips Manufacturing Company, Inc.
820 Mount View Lane
Wellington, AL 36279



Società per Azioni
Capitale sociale € 206.582,00 IV
C.C.I.A.A. CH 63169
Reg. Soc. N° 1275 - M. 230.213
C.F./P.Iva 00227220696

C.da Cerret
66010 Miglia... (CH) Italy
Tel +39 0871 95841
Fax +39 0871 950295

Viale dell'Elettronica, 200
41058 Vignola (MO) Italy
Tel +39 059 763532
Fax +39 059 763532

www.sicma.it - email: info@sicma.it

Invoice

Vat Number	Discount	Currency USD
Payment Terms At 90 days date of invoice		Discount

Bill to:

10011
DALE PHILLIPS EQUIPMENT MFG. CO., INC.

820 MOUNT VIEW LANE

36279 WELLINGTON (AL) (USA)

Page 1	Bank Details:	Date 17-07-2006	Invoice Number 1066/00
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Part Number	Description	U.M.	Qty	Price	Discount	Amount	C.I.
	Rif.(DT) N.:1067 Del: 17-07-2006 Rif.(OR) N.:857 Del: 12-04-2006 P.O. # 41006M1						
8874150	ZL-L 150 tiller e/w drive shaft	NR	18,00	880,00		15.840,00	308
8875185	CS 185 tiller e/w drive shaft	NR	18,00	1.090,00		19.620,00	308
8183060	FA 1500 mower e/w drive shaft	NR	21,00	865,00		18.165,00	308
8183072	FA 1800 mower e/w drive shaft	NR	18,00	940,00		16.920,00	308
8823210	ST 210 tiller e/w drive shaft	NR	2,00	1.700,00		3.400,00	308
	PACKING LIST.NR.3 PACKAGES NR.14 NET WEIGHT KG: 17.528 GROSS WEIGHT KG: 18.960 CONTAINER NR: TGHU 860067.3 SIGILLO NR: 3628316 DECLARATION:WOOD PACKAGING MATERIAL IN COMPLIANCE WITH ISPM 15'. DOOR TO DDOR -WELLINGTON AL EACH UNIT WAS SENT WITH THE MANUAL						

Goods Value	Discount	Freight Costs	Packing Costs
Payment Terms	Due to	Amount	>>> Next >>>

EX. A



Capitale sociale € 206.582,00 IV
C.C.I.A.A. CH 63169
Reg. Soc. N° 1275 - M. 230.213
C.F./P.Iva 00227220696

C.da Cerret
66010 Miglianico (CH) Italy
Tel +39 0871 95841
Fax +39 0871 950295

Viale dell'Elettronica, 200
41058 Vignola (MO) Italy
Tel +39 059 763532
Fax +39 059 763532

www.sicma.it - email: info@sicma.it

Invoice

Vat Number	Discount	Currency USD
Payment Terms At 90 days date of invoice		Discount

Bill to:

10011
DALE PHILLIPS EQUIPMENT MFG. CO., INC.

820 MOUNT VIEW LANE

36279 WELLINGTON (AL) (USA)

Page 2	Date 17-07-2006	Invoice Number 1066/00
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Part Number	Description	U.M.	Qty	Price	Discount	Amount	C.I.
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MACHINE COMPLETE WITH ACCIDENT PREVENTION
GUARD (IN COMPLIANCE WITH EEC REGULATIONS)
DECLARATIONS: THE GOODS ARE OF ITALIAN
ORIGIN.

DECLARATIONS: THE SOLID WOOD PACKING
MATERIALS UTILIZED IN THIS SHIPMENT ARE
TOTALY FREE FROM BARK AND APPARENTLY FREE
FROM LIVE PLANT PEST.

CONTRIBUTO CONAI ASSOLTO
WOOD PACKING MATERIAL IN COMPLIANCE WITH
ISPM 15

The undersigned company SICMA SPA declares that the goods indicated in this invoice are not
included in the Dual-Use list and are therefore free for export.

Si dichiara che la merce relativa alla presente fattura è di libera esportazione non rientrando nelle sotto elencate categorie:

- Beni inclusi nell'elenco di prodotti a duplice uso (scopi civili e militari contemporaneamente);
- Merci sottoposte ad autorizzazione/controllo da parte dei beni culturali;
- Merci comprese nella convenzione di Washington: pelli e parti di animali, flora in via di estinzione;
- Merci utilizzate come mezzi di tortura o repressione;

Goods Value	Discount	Freight Costs	Packing Costs
73.945,00		4.450,00	
Payment Terms	Due to	Amount	Total USD
Rim.Dir.	17-10-2006	78.395,00	78.395,00



tà per Azioni
 S.p.A. Industriale C.da Saletti
 66041 Atesa (CH) Italy
 Telefono +39 0872 88471 Fax +39 0872 897200
 www.eurocardan.it - email: info@eurocardan.it

Capitale sociale € 333.213,60 IV
 C.C.I.A.A. CH 72026
 Reg. Soc. N° 1268 - M. 230.674
 C.F./P.Iva 0062204 069 9

Invoice**Ship to:**

DALE PHILIPS EQUIPMENT
 820 MOUNT VIEW LANE
 36279 AL WELLINGTON (USA)

Bill to:

1529
 DALE PHILLIPS EQUIPMENT

 820 MOUNT VIEW LANE

 36279 WELLINGTON AL (USA)

Vat Number

Discount

Currency
USD

Payment Terms

Discount

RIMESSA DIRETTA 180 GG DF

Page

Bank Details:

1

Date

25-07-2007

Invoice Number

803

Part Number	Description	U.M.	Qty	Price	Discount	Amount	C.I.
	Rif.(DT) N.:919 Del: 25-07-2007						
	Rif.(OR) N.:3509/1 Del: 02-05-2007						
	EC 016-07-01						
EZ45000-0002	EZ4 1110/1310 1024910-1074040 CP SL	NR	1.400,00	55,000		77.000,00	308

PACKAGES NR 27
 NET WEIGHT KG 18536
 GROSS WEIGHT KG 19600
 DELIVERY DOOR TO DOOR
 CONTAINER NR: MSCU 782865.2
 SEAL NR: 96795

NEW EQUIPMENT

DECLARATIONS: THE GOODS ARE OF ITALIAN ORIGIN.

DECLARATIONS: THE SOLID WOOD PACKING MATERIALS UTILIZED IN THIS SHIPMENT ARE TOTALY FREE FROM BARK AND APPARENTLY FREE FROM LIVE PLANT PEST.

WOOD PACKING MATERIAL IN COMPLIANCE WITH ISPM 15

The undersigned company EUROCARDAN SPA declares that the goods indicated in this invoice are not included in the Dual-Use list and are therefore free for export.

Si dichiara che la merce relativa alla presente fattura è di libera esportazione non rientrando nelle sotto elencate categorie:

- Beni inclusi nell'elenco di prodotti a duplice uso (scopi civili e militari contemporaneamente);
- Merci sottoposte ad autorizzazione/controllo da parte dei beni culturali;
- Merci comprese nella convenzione di Washington: pelli e parti di animali, flora in via di estinzione;
- Merci utilizzate come mezzi di tortura o repressione;

Goods Value
77.000,00

Discount

Freight Costs

Packing Costs

Payment Terms

Due to

Amount

Rim.Dir.

25-01-2008

77.000,00

Total USD

77.000,00

Ex. B



EUROCARDAN s.p.a. Zona Industriale C.da Salletti - 66041 Ateisa (CH) - Italy
Tel. +39 0872 88471 - Fax +39 0872 897200
www.eurocardan.it - E-mail: info@eurocardan.it
PIVA: 00622040699

MARCELLO AURORA
SALESMAN



Roller



E-mail: marcello.aurora@eurocardan.it



SICMA SPA
66010 Miglianico (CH)
Contrada Cerreto, 39
Tel. +39 0871 95841
Fax +39 0871 951999

P.I. 00227220696

MARCELLO AURORA
Sales Department

Ex C